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8
9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

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12
13 SECURITIES AND EXCHANGE
COMMISSION,

14 Plaintiff,

15 vs.

16 JUSTIN SAMUEL CARY,

17 Defendant.
18

Case No. 8:17-cv-01649

COMPLAINT

19
20 Plaintiff Securities and Exchange Commission (“SEC”) alleges:

21 **JURISDICTION AND VENUE**

22 1. The Court has jurisdiction over this action pursuant to Sections 21(d)(1),
23 21(d)(3)(A), 21(e) and 27(a) of the Securities Exchange Act of 1934 (“Exchange
24 Act”), 15 U.S.C. §§ 78u(d)(1), 78u(d)(3)(A), 78u(e) & 78aa(a).

25 2. Defendant has, directly or indirectly, made use of the means or
26 instrumentalities of interstate commerce, of the mails, or of the facilities of a national
27 securities exchange in connection with the transactions, acts, practices and courses of
28 business alleged in this complaint.

1 3. Venue is proper in this district pursuant to Section 27(a) of the Exchange
2 Act, 15 U.S.C. § 78aa(a) because certain of the transactions, acts, practices and
3 courses of conduct constituting violations of the federal securities laws occurred
4 within this district. In addition, venue is proper in this district because defendant
5 Cary resides in this judicial district.

SUMMARY

7 4. This case concerns insider trading by Defendant Justin Samuel Cary in
8 the stock of Adaptive Medias, Inc. (“Adaptive Medias”), in advance of the
9 company’s February 1, 2016 announcement of an offer from a rival advertising
10 technology firm to acquire it in a cash-for-stock transaction at a steep premium to
11 Adaptive Medias’ prevailing market price. Cary is a certified public accountant. In
12 2016, he was working at Adaptive Medias as a consultant, and in that capacity, Cary
13 was responsible for the company’s accounting, he prepared its financial statements,
14 and he served as Adaptive Medias’ point of contact with its independent auditors.
15 Cary played a central role in the company’s SEC filings and thus a pivotal part in
16 ensuring the accuracy and integrity of Adaptive Medias’ disclosures to the financial
17 marketplace. Cary abused that position of trust through his illicit trading.

18 5. On January 28, 2016, Cary received an internal email from Adaptive
19 Medias’ controller about a soon-to-be-issued press release announcing that the
20 company had received an acquisition offer at a price nearly ten times its current
21 trading price. Cary then broke the law – and his duty to keep Adaptive Medias’
22 proprietary information confidential – without hesitation. Just six minutes after
23 having received the controller’s email, Cary logged on to his personal online
24 brokerage account and bought shares of Adaptive Medias on the basis of that material
25 non-public information. Days later, when Adaptive Medias issued its press release
26 announcing the acquisition offer, the company’s share price increased 428% over the
27 prior day’s close. Cary quickly sold and netted a tidy profit of \$8,140.25 on his
28 original \$2,880.00 investment in Adaptive Medias stock. In doing so, Cary engaged

1 in insider trading in violation of the antifraud provisions of the Exchange Act.

2 6. With this complaint, the SEC seeks a permanent injunction prohibiting
3 future violations of the federal securities laws, disgorgement of Cary’s ill-gotten
4 gains along with prejudgment interest, an order requiring him to pay civil penalties,
5 and an officer and director bar.

6 **DEFENDANT**

7 7. **Justin Samuel Cary**, age 35, resides in San Juan Capistrano, California,
8 and has been a California-licensed certified public accountant (“CPA”) since April
9 2009. In his accounting career, Cary has worked in several positions as an outside
10 auditor and as an in-house accountant. From September 2013 through the present,
11 Cary has been a consultant for NOW CFO, LLC (“NOW CFO”), an accounting
12 outsourcing firm. In addition, from July 2015 to the present, Cary has been the chief
13 financial officer, chief operating officer, and a member of the board of directors for
14 Praxsyn Corp., whose common stock is publicly-traded and registered with the SEC.

15 **RELATED ENTITIES**

16 8. **Adaptive Medias** is an advertising-technology company. Its common
17 stock is registered under Section 12(g) of the Exchange Act and trades under the
18 ticker symbol “ADTM” on OTC Link, an electronic inter-dealer system that displays
19 quotes from broker-dealers for over-the-counter securities. Adaptive Medias is
20 incorporated in Nevada.

21 9. **AdSupply, Inc.** (“AdSupply”) is also an advertising technology
22 company. AdSupply is a competitor of Adaptive Medias and a private California
23 corporation.

24 10. **NOW CFO** is an outsourcing firm that focuses on placing outsourced
25 accounting and finance experts with its clients, who are typically smaller companies.
26 These accountants – who NOW CFO calls “consultants” – perform accounting
27 services for NOW CFO clients, including preparing financial statements, recording
28 journal entries, and acting as an accounting and finance point of contact for the

1 client's independent auditor.

2 **THE ALLEGATIONS**

3 **A. Cary and Adaptive Medias**

4 11. Cary was an employee of NOW CFO from September 2013 to August
5 2015, and has been an independent subcontractor of NOW CFO since then.

6 12. NOW CFO placed Cary as a consultant at Adaptive Medias from March
7 2013 through March 2016.

8 13. Cary provided accounting services to Adaptive Medias in that
9 timeframe.

10 14. In his role as a NOW CFO consultant to Adaptive Medias, Cary
11 prepared the financial statements contained in the Forms 10-K and 10-Q that the
12 company filed with the SEC. He also recorded journal entries for amortization and
13 stock-based compensation, and acted as the company's point of contact for its
14 independent auditors.

15 15. Because no employee at Adaptive Media, including its controller, had
16 any significant expertise in accounting, Adaptive Medias relied on Cary to perform
17 all higher-level accounting functions at the company from March 2013 to March
18 2016.

19 **B. Cary Traded on Non-Public Information About AdSupply's Acquisition**
20 **Proposal**

21 16. On January 27, 2016, AdSupply made a confidential offer to purchase
22 Adaptive Medias for \$35 million, or \$1.50 per share, nearly ten times its then trading
23 price.

24 17. A day later, at 3:31 p.m. PST, Adaptive Medias' controller sent Cary an
25 email asking him for accounting advice concerning a planned press release.

26 18. The controller's email quoted the headline of the anticipated release,
27 which stated that:
28

1 ADAPTIVE MEDIAS, INC. RECEIVES ACQUISITION
2 PROPOSAL FROM ADSUPPLY, INC. FOR \$35 MILLION, OR
3 \$1.50 PER SHARE, IN ALL CASH TRANSACTION

4 19. In his January 28 email, the controller inquired of Cary as follows:
5 [Adaptive Medias' investor relations group] is asking if we are
6 required to use the diluted share count rather than the basic share
7 count for our press release surrounding the [AdSupply letter of
8 intent] we received ... can you advise?

9 20. Upon receiving this email, Cary began drafting a response to the
10 controller, writing "There isn't [sic] any rules with that other than to not be
11 misleading. If they add \$1.50 per ..." At that point, Cary stopped writing in mid-
12 sentence, and logged onto his online brokerage account.

13 21. Cary placed an order to purchase 18,500 shares of Adaptive Medias
14 stock at 3:37:03 p.m. PST, just six minutes after the controller's email had arrived in
15 his inbox.

16 22. When Cary placed this stock trade, the news that Adaptive Medias had
17 received a \$1.50 per share cash acquisition proposal from AdSupply was confidential
18 and not public.

19 23. Adaptive Medias' stock closed at \$0.1576 on January 28, 2016.

20 24. His January 28, 2016 stock purchase was the first time Cary had ever
21 bought stock in Adaptive Medias.

22 25. Cary's January 28 draft response to the company's controller – which he
23 started writing but halted in mid-thought in order to go and buy Adaptive Medias
24 stock – was never completed nor sent.

25 26. Since Cary's January 28, 2016 buy order was placed after market close,
26 the order was filled by his broker the next morning, on January 29, at an average
27 purchase price of \$0.16 per share.

28 27. On February 1, 2016, Adaptive Medias issued a press release

1 announcing the letter of intent it had received from AdSupply.

2 28. The issued press release bore a title identical to the language quoted in
3 the January 28 email sent by Adaptive Medias' controller to Cary.

4 29. Following the release, Adaptive Medias' stock price rose substantially,
5 closing at \$0.74 per share on February 1, 2016.

6 30. On February 5, 2016, Cary sold all 18,500 shares of Adaptive Medias
7 that he had purchased on January 28, for sales proceeds of \$11,100.

8 31. In barely a week, Cary netted a profit of \$8,140.25 on his Adaptive
9 Medias investment.

10 **C. AdSupply's Non-Public Acquisition Proposal Was Material**

11 32. A reasonable investor would have viewed the non-public information
12 that Cary received on January 28, 2016 – that Adaptive Medias planned to announce
13 that it had received a cash acquisition offer from AdSupply at \$1.50 per share – as
14 being important to his or her investment decision.

15 33. The non-public information received by Cary on January 28, 2016 – that
16 Adaptive Medias planned to announce that it had received a cash acquisition offer
17 from AdSupply at \$1.50 per share – would have been viewed by a reasonable
18 investor as having significantly altered the total mix of information available to
19 investors.

20 34. The market's reaction to the February 1, 2016 Adaptive Medias press
21 release illustrates this. Once Adaptive Medias announced AdSupply's acquisition
22 offer at \$1.50 per share, Adaptive Medias' stock rose from its prior day's closing
23 price of \$0.14 per share to \$0.74 per share at market close on February 1, 2016, a
24 428% increase.

25 35. In addition, Adaptive Medias' trading volume on February 1, 2016 was
26 840,880 shares traded, a 2,380% increase over the prior day's volume of 33,900
27 shares traded.
28

1 **D. Cary Breached the Duties He Owed to Adaptive Medias and NOW CFO**

2 **1. Cary misappropriated material non-public information from**
3 **Adaptive Medias and NOW CFO**

4 36. In August 2015, Cary signed an independent subcontractor agreement
5 with an affiliate entity owned by NOW CFO (“NOW CFO Agreement”), and sent his
6 executed agreement to NOW CFO.

7 37. The NOW CFO Agreement, among other things, governed Cary’s work
8 as a consultant at Adaptive Medias in the relevant period.

9 38. The NOW CFO Agreement contained a confidentiality provision, which
10 defines “Confidential Information” as follows:

11 “Confidential Information” means all present and future
12 confidential and/or proprietary information belonging to ... any
13 client of [NOW CFO.]

14 39. The NOW CFO Agreement’s confidentiality provision further stated
15 that:

16 Obligations of Confidentiality. [Cary] may receive Confidential
17 Information, which shall remain the sole property of [NOW CFO]
18 or [NOW CFO’s] client ... [Cary] agrees that ... [he] shall not at
19 any time, during or after his employment ... (ii) use any
20 Confidential Information for the direct or indirect benefit of any
21 person or entity other than [NOW CFO], or a client of [NOW
22 CFO] except as [NOW CFO] may otherwise consent or direct in
23 writing.

24 40. Cary therefore agreed to maintain Adaptive Medias’ confidential and/or
25 proprietary information in confidence.

26 41. Further, based on the NOW CFO Agreement and the course of Cary’s
27 work as a consultant with Adaptive Medias, Adaptive Medias and Cary had a history,
28 pattern, or practice of sharing confidences in which Cary knew or reasonably should

1 have known that Adaptive Medias expected Cary to maintain the confidentiality of its
2 confidential and/or proprietary information.

3 42. Cary also understood that he had a duty to keep Adaptive Medias'
4 confidential and/or proprietary information confidential.

5 43. Cary accordingly owed both NOW CFO and Adaptive Medias a duty to
6 maintain Adaptive Medias' confidential and/or proprietary information in trust and
7 confidence.

8 44. By trading in Adaptive Medias' stock, without disclosing his intent to
9 trade to Adaptive Medias or NOW CFO, on the basis of material, non-public
10 information that he possessed, Cary misappropriated information from Adaptive
11 Medias and NOW CFO in breach of the duty of trust or confidence he owed to
12 Adaptive Media and NOW CFO, the sources of that information.

13 **2. Cary was a temporary insider of Adaptive Medias and traded in**
14 **breach of his duty to Adaptive Medias and its shareholders**

15 45. Given his consulting role at Adaptive Medias in the relevant period,
16 Cary temporarily became a fiduciary of the company. He and Adaptive Medias had
17 entered into a special confidential relationship in the conduct of Adaptive Medias'
18 business in which Cary was given access to information solely for Adaptive Medias'
19 corporate purposes.

20 46. If he had not been placed by NOW CFO with Adaptive Medias as an
21 accounting and finance consultant, Cary would not have learned, on January 28, 2016
22 when the company's controller sought his professional advice on the content of the
23 release, that Adaptive Medias was planning to issue a press release announcing that it
24 had received an acquisition offer from AdSupply to buy the company at \$1.50 per
25 share in an all cash transaction.

26 47. Thus, at the time he engaged in the subject trading, Cary had a
27 relationship of trust and confidence with Adaptive Medias' shareholders since Cary
28 had obtained that confidential information by reason of his position as a consultant

1 with Adaptive Medias, in which he was responsible for all of the company's high-
2 level accounting functions.

3 48. To prevent Cary from taking unfair advantage of uninformed Adaptive
4 Medias stockholders, this relationship of trust and confidence between Cary and
5 Adaptive Medias' shareholders imposed on Cary a duty to disclose or to abstain from
6 trading in Adaptive Medias' stock.

7 49. Cary breached his relationship of trust and confidence with Adaptive
8 Medias' shareholders and his fiduciary duty to Adaptive Medias when he: (i) traded
9 on the basis of material, non-public information about Adaptive Medias' plans to
10 publicly announce that it had received an acquisition offer from AdSupply at \$1.50
11 per share (information that Cary had obtained by reason of his position with Adaptive
12 Medias); and (ii) did not publicly disclose his intent to purchase Adaptive Medias
13 stock to the company, or to its shareholders.

14 **E. Cary Acted With Scienter**

15 50. Cary knew, or was reckless in not knowing, that the information he
16 possessed concerning Adaptive Medias' plan to announce the AdSupply acquisition
17 offer was material to a reasonable investor, as demonstrated by the alacrity with
18 which he traded on it.

19 51. Because he had executed an agreement that explicitly required him to
20 maintain Adaptive Medias' confidential and/or proprietary information in confidence,
21 and because he understood, separate and apart from that agreement, that he had
22 agreed to maintain that information in confidence, Cary knew, or was reckless in not
23 knowing, that he owed both Adaptive Medias and NOW CFO a duty of trust or
24 confidence to keep the material non-public information he possessed concerning
25 Adaptive Medias' plan to announce the AdSupply acquisition offer confidential, and
26 that he could not trade on that information without first disclosing his intent to trade
27 to Adaptive Medias and NOW CFO.

28 52. Cary only learned of the planned AdSupply acquisition offer press

1 release when Adaptive Medias' controller sought his accounting advice on the
2 content of that release. Cary accordingly knew, or was reckless in not knowing, that
3 he was only able to learn the information he possessed concerning Adaptive Medias'
4 plan to announce the AdSupply acquisition offer because he and Adaptive Medias
5 had entered into a special confidential relationship in the conduct of Adaptive
6 Medias' business in which Cary was given access to information solely for Adaptive
7 Medias' corporate purposes.

8 53. Given that special confidential relationship, Cary knew, or was reckless
9 in not knowing, that at the time he engaged in the subject trades, he was a temporary
10 fiduciary of the company with a concomitant relationship of trust and confidence with
11 Adaptive Medias' shareholders, one that imposed on him a duty to disclose or to
12 abstain from trading in Adaptive Medias' stock on the basis of the information he
13 possessed concerning Adaptive Medias' plan to announce the AdSupply acquisition
14 offer.

15 **FIRST CLAIM FOR RELIEF**

16 **Fraud in the Connection with the Purchase and Sale of Securities**

17 **Violations of Section 10(b) of the Exchange Act and Rule 10b-5(a) and (c)**

18 54. The SEC realleges and incorporates by reference paragraphs 1 through
19 53 above.

20 55. After learning of Adaptive Medias' plan to announce that it had received
21 an acquisition offer from a competitor, Cary traded on the basis of that non-public
22 information, which he was obligated to keep in confidence and which he had only
23 received through his special confidential relationship with Adaptive Medias in the
24 conduct of its business. By trading on the basis of that non-public information, Cary
25 breached the duty of trust and confidence he owed to Adaptive Medias and NOW
26 CFO, and violated the relationship of trust and confidence he owed to Adaptive
27 Medias' shareholders as a temporary insider of the company.

28 56. By engaging in the conduct described above, Defendant Cary directly or

1 indirectly, in connection with the purchase or sale of a security, by the use of means
2 or instrumentalities of interstate commerce, of the mails, or of the facilities of a
3 national securities exchange: (a) employed devices, schemes, or artifices to defraud;
4 and (b) engaged in acts, practices, or courses of business which operated or would
5 operate as a fraud or deceit upon other persons.

6 57. Defendant Cary, with scienter: employed devices, schemes and artifices
7 to defraud; and engaged in acts, practices or courses of conduct that operated as a
8 fraud on the investing public by the conduct described in detail above.

9 58. By engaging in the conduct described above, Defendant Cary violated,
10 and unless restrained and enjoined will continue to violate, Section 10(b) of the
11 Exchange Act, 15 U.S.C. § 78j(b), and Rules 10b-5(a) and 10b-5(c) thereunder, 17
12 C.F.R. §§ 240.10b-5(a) & 240.10b-5(c).

13 **PRAYER FOR RELIEF**

14 WHEREFORE, the SEC respectfully requests that the Court:

15 **I.**

16 Issue findings of fact and conclusions of law that Defendant committed the
17 alleged violations.

18 **II.**

19 Issue judgments, in forms consistent with Rule 65(d) of the Federal Rules of
20 Civil Procedure, permanently enjoining Cary, and his officers, agents, servants,
21 employees and attorneys, and those persons in active concert or participation with
22 him, who receive actual notice of the judgment by personal service or otherwise, and
23 each of them, from violating Section 10(b) of the Exchange Act [15 U.S.C. §§ 78j(b)]
24 and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

25 **III.**

26 Order Defendant to disgorge all funds received from his illegal conduct,
27 together with prejudgment interest thereon.
28

1 **IV.**

2 Order Defendant to pay civil penalties under Sections 21(d)(3) and 21A(a) of
3 the Exchange Act [15 U.S.C. §§ 78u(d)(3) 78u-1(a)].

4 **V.**

5 Enter an order, under Section 21(d)(2) of the Exchange Act [15 U.S.C. §
6 78u(d)(2)] prohibiting Cary from acting as an officer or director of any issuer that has
7 a class of securities registered in accordance with Section 12 of the Exchange Act [15
8 U.S.C. §78I], or that is required to file reports pursuant to Section 15(d) of the
9 Exchange Act [15 U.S.C. §78o(d)].

10 **VI.**

11 Retain jurisdiction of this action in accordance with the principles of equity and
12 the Federal Rules of Civil Procedure in order to implement and carry out the terms of
13 all orders and decrees that may be entered, or to entertain any suitable application or
14 motion for additional relief within the jurisdiction of this Court.

15 **VII.**

16 Grant such other and further relief as this Court may determine to be just and
17 necessary.

18 Dated: September 21, 2017

19 */s/ Gary Y. Leung*

20 _____
GARY Y. LEUNG

TODD S. BRILLIANT

Attorneys for Plaintiff

Securities and Exchange Commission